

# Who's Afraid of Voters Abroad

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Low election turn-out in contemporary societies has been the subject of worries for the defenders of participatory democracy and even a topic of research to find ways of improvement. In this context, what happened on 26 May 2019 with Romanian voters all across Europe seems surreal.

## The Right to Vote of Romanian Citizens Abroad – An Impossible Dream?

Almost five years after the presidential elections of 2014, the elections for the European Parliament revealed that the problems of the Romanian voting system, especially as regards the vote of the Romanian citizens abroad, remain far from being solved. [In 2014, thousands of Romanian citizens residing abroad were prevented from voting due to a lacunar legislation and to the lack of political willingness to change it in due time for the elections.](#) The general elections of 2016 escaped this problem because a law on postal voting was enacted in 2015, but limited to parliamentary elections. The legal regulations on European elections, presidential elections and the referendum remained unchanged as regards the regulation of the voting process abroad. The responsible authorities for the organisation of the voting process remain the Ministry of Foreign Affairs and the Permanent Electoral Authority. There is no possibility to vote by mail or online. Therefore, the only hope to avoid situations such as the one in 2014 was the creation of a sufficient number of polling stations and/or the change of the legal dispositions regarding the possibility to extend the voting time in case of a large number of voters present at the time of the closing. None of these happened in the current European elections. Nor has the organisation of the voting process as such been improved: just like in 2014, polling stations did not have sufficient staff for registering voters, not enough stamps etc.

Therefore, on 26 May 2019, all across Europe, thousands of Romanian citizens were prevented from exercising their fundamental right to vote in the European Parliament elections and to express their opinion in the national referendum that was convened for the same day. One day after, instead of assuming responsibility, the Romanian Foreign Minister claimed that it had not been possible to know that so many citizens would vote and that the number of polling stations was higher than in 2014. These are feeble excuses, taking into account the measures, including legislation changes, that could have been adopted to prevent such gross violations of the right to vote: online voting or vote by mail; ensuring a sufficient number of polling stations; clear legal provisions on extending the time for voting in case of a high number of voters present; a better organisation of the voting process by ensuring a sufficient number of staff, stamps and other necessary materials.

Unlike 2014, however, the right to vote in the 2019 European elections comes under the protection of Article 3 Protocol 1 of the European Convention on Human Rights and of Article 39 of the EU Charter of Fundamental Rights. Therefore, complaints to national courts and then to the Strasbourg Court can be filed by citizens who have been prevented from exercising this right. Also, complaints may be addressed to the European Commission for breach of the EU Charter.

## **Turn-out and Results of the Elections and of the ‘Anti-Corruption’ Referendum**

In this context, the question arises: why was turnout so high in elections where voters seem to have much less at stake than in presidential or parliamentary elections? In the case of Romanians who voted both in Romania and abroad, the 26 May vote was an opportunity to state their support for the European ideas and principles (rule of law, anti-corruption, democracy) and to distance themselves from the populist and nationalist discourse promoted by the ruling party (PSD). Since 2016, when PSD won the majority in the Romanian Parliament (in alliance with the smaller party ALDE), its main concerns were changing the laws on the judiciary (for details, see [my posts](#) on this blog as well as the [post by Simina Tanasescu](#)), mitigating the anti-corruption measures by changing the criminal legislation and offering, at the same time, higher pensions and salaries in order to secure the support of the population. Their main enemies were the “foreigners”, including multinational corporations, banks, ‘Soros’ and, of course, ‘Europe’. [Despite protests from the civil society](#), despite numerous criticisms from the European Commission (via the Co-operation and Verification Mechanism) and from the Venice Commission, the PSD Government went on with the ‘reforms’, generating a high level of discontent from the part of the European-oriented population, including Romanians living abroad, especially across Europe. Romanians are the biggest minority resulting from intra-EU immigration in Italy, Spain and the UK. Big Romanian communities can be found in Germany, France, Belgium, Portugal, the Netherlands, Sweden, Norway etc. These elections were the opportunity for all of them – living in or outside Romania – to express their discontent by going to the polls. As a result, the social-democrats obtained 23% of the votes while the opposition formed by the liberal party PNL and the liberal-democrat alliance USR-PLUS obtained 27% and 20% respectively (partial results). ALDE – the small party who formed the governmental majority with PSD in 2016 – did not reach the 5% electoral threshold.

Another reason for the high turnout was the organisation, on the same day with the elections, of a referendum convened by President Klaus Iohannis, according to his constitutional prerogative set forth by Article 90 of the Romanian Constitution. The referendum had been announced as early as 2017 but the opportunity seemed better 2 years later, when it became evident that the ruling party intended to diminish the efforts made to enhance judicial independence and to eradicate corruption. The two questions addressed to the voters were: “Do you agree with the prohibition of amnesty and pardon of corruption offences?” and “Do you agree with the prohibition of adopting Emergency Government Ordinances in the field of criminal offences,

criminal punishments and of the judicial organisation AND with the extension of the right to challenge the Government Ordinances directly at the Constitutional Court?” (on the regime of emergency ordinances in Romania, see here <https://verfassungsblog.de/we-dont-need-no-constitution-on-a-sad-eu-membership-anniversary-in-romania/>). In order to be validated, the law on the referendum provides a turn-out quorum of at least 30% of the total number of registered voters, as well as a 25% of valid votes. On 26 May, the turn-out was of over 41% of the total number of voters (49% for the EP elections) and over 80% of the participating voters responded “Yes” to both questions. Although it is only a consultative referendum – i.e. does not produce any legal effects by itself – it will be a starting point for national campaigns directed towards changes of the current legislation regarding especially the judiciary and its independence as well as towards maintaining a strict regime of criminalisation of corruption offences. Even the Romanian Constitutional Court stated in 2013 that the consultative referendums should be taken into account by the legislator. This is all the more important given that the main issues of the supervisory mechanism for Romania established by the European Union in 2007 are the independence of the judiciary and the fight against corruption.

Therefore, the vote of 26 May 2019 brings more than a turnout record: it is a pro-European, anti-populist and anti-corruption statement by the Romanian voters. The fact that so many of them were prevented to exercise their fundamental right proves all the more the need of such a bold statement.

